

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JERAMIE EIDEM,

Plaintiff,

v.

PATRICK GLEBE, SARA SMITH, LINDA  
BODINE, STEVE HAMMOND, and JOHN  
AND JANE DOES 1-3 (DOC CARE  
REVIEW COMMITTEE MEMBERS),

Defendants.

No. C11-5716 RBL/KLS

**REPORT AND RECOMMENDATION**  
**Noted For: August 10, 2012**

Before the Court is Plaintiff's voluntary motion to dismiss without prejudice. ECF No. 21. The undersigned recommends that the motion be granted.

**BACKGROUND**

On September 8, 2011, Plaintiff filed a 42 U.S.C. §1983 Civil Rights Complaint alleging that his Eighth Amendment rights were violated when he was denied a CPAP machine as treatment for sleep apnea. ECF No. 5. Before the Defendants answered, Plaintiff filed an Amended Complaint on October 11, 2011. ECF No. 9. Defendants filed their Answer to the Amended Complaint on November 14, 2011. ECF No. 13. In his First Amended Complaint, Plaintiff alleges Eighth Amendment violations against the individual Defendants, but expanded on his factual allegations. *Id.* On March 22, 2012, Plaintiff filed a Motion for Leave to Amend (seeking to add several new defendants and claims under the Americans with Disabilities Act, the Rehabilitation Act, the First Amendment, the Equal Protection Clause, conspiracy, and numerous state tort claims). Plaintiff also filed a motion to stay (seeking to stay this action for

seventy days while he exhausted his administrative remedies with regard to the state tort claims that he wished to add to his complaint). ECF No. 15-1. The Court denied the motions. ECF No. 20.

Plaintiff now moves to withdraw his complaint “without prejudice leaving no party as prevailing party.” ECF No. 21.

### DISCUSSION

Rule 41 sets forth the circumstances under which an action may be dismissed. Under Rule 41(a)(2), an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper. Defendants have filed their answer to Plaintiff’s amended complaint. They have pleaded no counterclaim and have filed no motions for summary judgment.

### CONCLUSION

The Court should grant Plaintiff’s motion to dismiss (ECF No. 21) and dismiss this action without prejudice. Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report and Recommendation to file written objections. See also Fed. R.Civ.P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on **August 10, 2012**, as noted in the caption.

**DATED** this 23rd day of July, 2012.



Karen L. Strombom  
United States Magistrate Judge